

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-1896V

NOEL FREMPER,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Chief Special Master Corcoran

Filed: January 3, 2025

Leah V. Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Madylan L. Yarc, U.S. Dep't of Justice, Washington, DC, for Respondent.

DECISION GRANTING FINAL AWARD OF ATTORNEY'S FEES AND COSTS¹

On December 18, 2020, Noel Fremper filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the "Vaccine Program").² Petitioner alleged that she sustained a shoulder injury related to vaccine administration ("SIRVA") within the time period set forth in the Table, and suffered osteomyelitis, all of which were caused by an influenza ("flu") vaccine she received on October 22, 2019. The parties successfully settled the case, and I issued a decision awarding Petitioner compensation. *See* Decision, dated June 27, 2024 (ECF No. 47).

Petitioner has now filed a motion for a final award of attorney's fees and costs. Motion, dated Dec. 6, 2024 (ECF No. 52) ("Mot."). This is Petitioner's sole such request. Petitioner requests a total of \$51,534.03 in attorney's fees and costs (\$48,963.00 in fees, plus \$2,571.03 in

¹ "Under Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public in its present form. *Id.*"

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) ("Vaccine Act" or "the Act"). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

costs) for the work of the office of attorney Leah V. Durant. Mot. at 1. Respondent reacted to the fees request on December 19, 2024. *See* Response, dated Dec. 19, 2024 (ECF No. 53) (“Resp.”). Respondent agrees that Petitioner has satisfied the statutory requirements for a fees award, and otherwise defers the calculation of the amount to be awarded to my discretion. Resp. at 2, 4. Petitioner filed a reply, maintaining her position and requesting that she be awarded the requested fees and costs as indicated. Reply, dated Dec. 23, 2024 (ECF No. 54).

For the reasons set forth below, I hereby **GRANT** Petitioner’s motion, awarding fees and costs in the total amount of **\$51,534.03**.

I. Calculation of Fees

Because Petitioner’s claim was successful, she is entitled to a fees and costs award—although only “reasonable” fees or costs may be awarded in the Program. Determining the appropriate amount of the fees award is a two-part process. The first part involves application of the lodestar method—“multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.” *Avera v. Sec’y of Health & Hum. Servs.*, 515 F.3d 1343, 1347–48 (Fed. Cir. 2008) (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). The second part involves adjusting the lodestar calculation up or down to take relevant factors into consideration. *Id.* at 1348. This standard for calculating a fee award is considered applicable in most cases where a fee award is authorized by federal statute. *Hensely v. Eckerhart*, 461 U.S. 424, 429–37 (1983).

An attorney’s reasonable hourly rate is determined by the “forum rule,” which bass the proper hourly rate to be awarded on the forum in which the relevant court sits (Washington, D.C., for Vaccine Act cases), *except* where an attorney’s work was not performed in the forum and there is a substantial difference in rates (the so-called “*Davis*” exception”). *Avera*, 515 F.3d at 1348 (citing *Davis Cty. Solid Waste Mgmt. & Energy Recovery Special Serv. Dist. v. U.S. Env’tl. Prot. Agency*, 169 F.3d 755, 758 (D.C. Cir. 1999)). A 2015 decision established the hourly rate ranges for attorneys with different levels of experience who are entitled to the forum rate in the Vaccine Program. *See McCulloch v. Sec’y of Health & Hum. Servs.*, No. 09-293V, 2015 WL 5634323, at *19 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

Petitioner requests the following rates for her attorney and support staff, based on the years work was performed:

	2019	2020	2021	2022	2023	2024
Leah V. Durant (Attorney)	\$380.00	\$395.00	\$420.00	\$441.00	\$463.00	\$486.00
Christopher Williams (Attorney)	--	--	--	\$341.00	\$358.00	\$376.00

Mateo Forero (Attorney)	--	--	--	--	--	\$385.00
Paralegals	\$150.00	\$160.00	\$165.00	\$173.00	\$181.00	\$190.00

ECF No. 52-1 at 1–22.

Ms. Durant and her colleagues practice in Washington, DC—a jurisdiction that is, by definition, “in forum.” Accordingly, counsel should be paid forum rates as established in *McCulloch*. See *Clavio v. Sec’y of Health & Hum. Servs.*, No. 17-1179V, 2024 WL 329239 (Fed. Cl. Spec. Mstr. Jan. 2, 2024). The rates requested for Ms. Durant and her colleagues (including newly requested 2024 rates for Mr. Forero and Mr. Williams) are also consistent with what has previously been awarded for their work, in accordance with the Office of Special Masters’ fee schedule.³ *Murray v. Sec’y of Health & Hum. Servs.*, No. 17-1357V, 2024 WL 1433667 (Fed. Cl. Spec. Mstr. Mar. 5, 2024); *E.H. v. Sec’y of Health & Hum. Servs.*, No. 17-126V, 2023 WL 8543593 (Fed. Cl. Spec. Mstr. Nov. 16, 2023); *Aycock v. Sec’y of Health & Hum. Servs.*, No. 19-235V, 2023 WL 8869423 (Fed. Cl. Spec. Mstr. Nov. 8, 2023). I thus find no cause to reduce them in this instance. And I deem the time devoted to the matter to be reasonable. I will therefore award all fees requested without adjustment.

II. Calculation of Attorney’s Costs

Just as they are required to establish the reasonableness of requested fees, petitioners must also demonstrate that requested litigation costs are reasonable. *Presault v. United States*, 52 Fed. Cl. 667, 670 (2002); *Perreira v. Sec’y of Dep’t of Health & Hum. Servs.*, 27 Fed. Cl. 29, 34 (1992). Reasonable costs include the costs of obtaining medical records and expert time incurred while working on a case. *Fester v. Sec’y of Health & Hum. Servs.*, No. 10-243V, 2013 WL 5367670, at *16 (Fed. Cl. Spec. Mstr. Aug. 27, 2013). When petitioners fail to substantiate a cost item, such as by not providing appropriate documentation to explain the basis for a particular cost, special masters have refrained from paying the cost at issue. See, e.g., *Gardner-Cook v. Sec’y of Health & Hum. Servs.*, No. 99-480V, 2005 WL 6122520, at *4 (Fed. Cl. Spec. Mstr. June 30, 2005).

Petitioner seeks \$2,571.03 in outstanding costs, including the filing fee, medical record retrieval costs, mailing costs, and costs associated with the work of a single expert, Timothy Hancock, who provided a medical records review service. ECF No. 52-2 at 2, 11. Mr. Hancock submitted an invoice reflecting a total of \$1,250.00 (billing at an hourly rate of \$125.00) charged to the matter. *Id.* at 11. Because I find those expert costs requested to be reasonable overall, they shall be reimbursed in full. All other requested costs in this matter are commonly incurred in the Vaccine Program and are reasonable herein.

³ OSM Attorneys’ Forum Hourly Rate Fee Schedule, <https://www.uscfc.uscourts.gov/node/2914> (last visited Jan. 3, 2025).

CONCLUSION

Based on the foregoing, and in the exercise of the discretion afforded to me in determining the propriety of a final fees award, I **GRANT** Petitioner's Motion for Attorney's Fees and Costs in its entirety. Petitioner is awarded a total amount of **\$51,534.03**, reflecting \$48,963.00 in attorney's fees and \$2,571.03 in costs, to be paid through an ACH deposit to Petitioner's counsel's IOLTA account for prompt disbursement.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of this Decision.⁴

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment if (jointly or separately) they file notices renouncing their right to seek review.